

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 8, 2005 appellant, then a 48-year-old part-time food service worker, filed a traumatic injury claim alleging that on July 28, 2005 she stepped down from a curb in the parking lot into a small hole and twisted her right ankle. OWCP accepted the claim for right ankle sprain and lumbar sprain. Following her injury, appellant returned to work in a restricted duty capacity for one to three hours a day on October 28, 2005 and increased to working four hours a day in a restricted duty capacity around March 23, 2006. Appellant stopped working on December 4, 2006 and opted for disability retirement effective September 14, 2007.

Appellant submitted a request for a schedule award. By decision dated October 28, 2010, OWCP awarded nine percent permanent impairment of loss of use of the right lower extremity. By decision dated January 26 and May 23, 2011, it denied modification of its schedule award decision.

By decision dated December 14, 2011, OWCP modified the October 28, 2010 decision to reflect an additional four percent impairment to the right lower extremity, for a total schedule award of 13 percent. The additional evidence upon which appellant's schedule award was recalculated included reports from Dr. Taryn Lambrecht, a Board-certified internist, dated October 22, 2010, May 5 and September 29, 2011.

On May 1, 2012 appellant requested reconsideration. She submitted an undated personal statement, wherein she essentially chronicled her feelings, symptoms and daily struggles since her work injury, and a copy of Dr. Lambrecht's September 29, 2011 report, previously of record.

By decision dated February 20, 2013, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ Section 10.608(b) provides

³ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁶

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁷ She need only submit relevant, pertinent evidence not previously considered by OWCP.⁸ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁹

ANALYSIS

OWCP issued a December 14, 2011 decision granting appellant's claim for an increased schedule award of 13 percent. As noted above, the Board does not have jurisdiction over the December 14, 2011 decision. The issue presented on appeal is whether appellant's May 1, 2012 reconsideration request met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

Appellant did not submit any new or relevant evidence in support of her May 1, 2012 reconsideration request, nor did she show that OWCP erroneously applied or interpreted a specific point of law. In her personal statement, she described the effects of the work injury on her life but she did not argue that OWCP erroneously applied or interpreted a specific point of law; nor did she advance a relevant legal argument not previously considered by OWCP.

Appellant also provided a duplicative copy of Dr. Lambrecht's September 29, 2011 report, which was previously of record and considered by OWCP in their December 14, 2011 decision. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.¹⁰

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Therefore, OWCP properly denied her request for reconsideration.

⁶ *Id.* at § 10.608(b). See also *D.E.*, 59 ECAB 438 (2008).

⁷ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁸ See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

⁹ *Annette Louise*, 54 ECAB 783 (2003).

¹⁰ *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

On appeal, appellant expressed her disagreement with the schedule award amount. The underlying issue in a schedule award claim is medical in nature and the medical evidence submitted was duplicative in nature and insufficient to warrant merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board